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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ARMANDO OLIVEROS, Plaintiff and Respondent, v. CAROLINE S. LEE et al., Defendants and Appellants.	B282834 Los Angeles County Super. Ct. No. BC634806

APPEAL from a judgment of the Superior Court of Los Angeles County, Howard L. Halm, Judge. Affirmed.

Franklin Jeffries for Defendants and Appellants.

Allan A. Villanueva for Plaintiff and Respondent.

INTRODUCTION

Caroline S. Lee[1] and The Nu-Life, Inc. (collectively, defendants) appeal from a judgment enforcing the terms of a settlement agreement under section 664.6 of the Code of Civil Procedure between defendants and respondent Armando Oliveros on his complaint alleging defendants committed various wage and hour violations and engaged in unlawful business practices. Defendants contend substantial evidence does not support the trial court's finding that the settlement agreement was not a product of duress or undue influence. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND[2]

Oliveros worked as a live-in caregiver at an adult residential facility owned and operated by defendants from February 24, 2015 until January 1, 2016. In January 2016, Oliveros, through his attorney Allan A. Villanueva, filed a wage claim with the State of California Division of Labor Standards Enforcement (DLSE) against defendants. The DLSE scheduled a conference for May 17, 2016; Oliveros and his attorney participated, but defendants did not attend. On August 1, 2016, the DLSE sent notice to the parties of a hearing scheduled for September 21, 2016. Oliveros and his counsel appeared for the hearing, but defendants did not.

Also on September 21, 2016, Oliveros filed a complaint against defendants in the superior court. He asserted various wage and hour claims under the Labor Code based on defendants'

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[1] Caroline S. Lee is also known as Caroline Soonkyo Lee or Caroline Lee Soonkyo. She is the chief executive officer of The Nu-Life, Inc.

[2] We state the facts in the light most favorable to the judgment, as substantially set forth in the trial court's written order granting Oliveros's motion to enforce settlement.

alleged failure to pay him overtime wages, as well as an unfair business practices cause of action.

Villanueva personally served defendants with the summons, complaint, and notice of case assignment packet on that same day. Villanueva declared he advised Lee, the agent of The Nu-Life, Inc., to seek advice of counsel "several times." Villanueva also declared Lee "expressed an interest in settling the matter" and "proposed a settlement amount" that same day. Oliveros and Lee then exchanged counteroffers. After a week, the parties had arrived at an agreeable settlement amount, and Villanueva sent a proposed settlement agreement to Lee on September 28, 2016.

Lee faxed the signature page with her signature on her own behalf, as well as on behalf of The Nu-Life, Inc., on October 1, 2016. Oliveros signed the agreement on October 2, 2016, and on October 5, 2016, Villanueva faxed to Lee the signature page to the settlement agreement bearing all of the parties' signatures.

The settlement agreement provides that, in exchange for a dismissal of the complaint with prejudice and a mutual release of claims, defendants are to pay Oliveros, through Villanueva's client trust account, a total of $27,000. The agreement provides for two payments: a first payment for $7,000 by September 30, 2016, and a second payment of $20,000 by October 28, 2016.

The settlement agreement also includes the following provisions:

> "8. Independent Investigation
>
> "The parties hereto have been informed of their right to seek independent counsel to review this Agreement. [Defendants and Oliveros] represent that they have made such investigation as they deem necessary of the facts pertaining to this Agreement and the

parties hereto have not relied upon any promise or representation by any other person or party with respect to any such matter.

"9. Informed Consent

"The parties, and each of them, hereby declare and represent that they are voluntarily effecting this settlement and executing this Agreement.

"18. Consent

"Each of the parties certifies that they have read this Agreement in its entirety and fully understand and consent to the terms of the Agreement."

Villanueva received a check for $7,000 from The Nu-Life, Inc. on October 11, 2016. He never received the final $20,000 payment, however. As a result, on December 16, 2016, Oliveros filed a motion to enforce the terms of the settlement agreement under section 664.6 of the Code of Civil Procedure (section 664.6).

Defendants, who had retained counsel by this point, opposed the motion. They contended the settlement agreement was unenforceable because (1) Lee's consent was obtained through duress and/or undue influence; (2) Villanueva held himself out as a mediator; (3) it lacked consideration; and (4) it did not request the court retain jurisdiction to enforce its terms.

Lee filed a declaration in support of defendants' opposition. She stated she was alone in her office on September 21, 2016, when Villanueva entered unannounced late in the afternoon. Lee declared Villanueva served her with the summons and complaint and "threatened me with approximately $50,000 in damages plus attorney fees for both sides." She also averred Villanueva "held himself out as a mediator between the parties who could help them achieve a settlement." Lee said Villanueva also told her she

would face "immediate financial catastrophe" if she did not sign the settlement agreement and make a partial payment.

In her declaration, Lee also stated that Villanueva "presented himself as a legal expert on the subject of the California Health and Safety Code in regard to the licensing of community care facilities" both during the September 21 meeting and afterward.

Oliveros filed a reply memorandum of points and authorities, but did not file a reply declaration.

On January 19, 2017, the court heard argument after issuing a written tentative ruling granting the motion to enforce the settlement agreement. At the conclusion of the hearing, the court adopted its tentative ruling granting the motion. On March 7, 2017, the court entered judgment in favor of Oliveros and against defendants in the amount of $27,000. Defendants were credited with having paid $7,000, leaving a balance of $20,000 owed to Oliveros.

Villanueva served notice of entry of judgment on March 25, 2017. Defendants filed a timely notice of appeal.

DISCUSSION

Defendants appeal from the trial court's entry of judgment enforcing the terms of the parties' settlement agreement on the sole ground that the court's ruling finding no duress or undue influence was not supported by substantial evidence.

1. *Applicable law and standard of review*

This state has a strong public policy of encouraging the voluntary settlement of litigation. (*Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1359 (*Osumi*).) To that end, section 664.6 was enacted to provide "an expedited procedure of enforcing a settlement once it has been agreed upon." (*Id.* at p. 1360.) Section 664.6 provides:

> "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

When ruling on a section 664.6 motion, " 'the trial court acts as the trier of fact, determining whether the parties entered into a valid and binding settlement. [Citation.] Trial judges may consider oral testimony or may determine the motion upon declarations alone. [Citation.]' " (*Osumi,* at p. 1360.)

"The trial court's factual findings on a motion to enforce a settlement pursuant to section 664.6 'are subject to limited appellate review and will not be disturbed if supported by substantial evidence.' " (*Osumi, supra*, 151 Cal.App.4th at p. 1360.) In determining whether substantial evidence exists, our review "begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, italics omitted.) " 'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

"[T]he testimony of a witness whom the trier of fact believes, whether contradicted or uncontradicted, is substantial evidence, and we must defer to the trial court's determination that the[ ] witness[ ] [was] credible." (*Estate of Odian* (2006) 145

Cal.App.4th 152, 168.) Similarly, we defer to the trier of fact's determination that a witness was not credible. (*In re Hardy* (2007) 41 Cal.4th 977, 1010.) Thus, " ' "it is the exclusive province of the [trier of fact] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." ' [Citation.] Testimony may be rejected only when it is inherently improbable or incredible, i.e., ' "unbelievable *per se*," ' physically impossible or ' "wholly unacceptable to reasonable minds." ' [Citations.]" (*Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065.)

"Consistent with the venerable substantial evidence standard of review, and with our policy favoring settlements, we resolve all evidentiary conflicts and draw all reasonable inferences to support the trial court's findings that these parties entered into an enforceable settlement agreement and its order enforcing that agreement." (*Osumi, supra*, 151 Cal.App.4th at p. 1360.)

2. *Substantial evidence supports the trial court's finding that there was no duress or undue influence*

Like any other contract, a settlement agreement must have been reached through mutual assent. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811.) Defendants contend the settlement agreement here lacks mutual assent because Lee entered the agreement through duress and/or under the undue influence of Oliveros's attorney, Villanueva.

Economic duress includes "the doing of a wrongful act which is sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to the perpetrator's pressure." (*Rich & Whillock, Inc. v. Ashton Development, Inc.* (1984) 157 Cal.App.3d 1154, 1158 (*Rich & Whillock*).) "The assertion of a claim known to be false or a bad faith threat to breach a contract or to withhold a payment may

constitute a wrongful act for purposes of the economic duress doctrine." (*Id.* at p. 1159; see also *Odorizzi v. Bloomfield School District* (1966) 246 Cal.App.2d 123, 128 (*Odorizzi*) ["a threat to take legal action is not unlawful unless the party making the threat knows the falsity of his claim"].) "Duress envisions some unlawful action by a party by which one's consent is obtained through fear . . . or threats." (*Keithley v. Civil Service Board* (1970) 11 Cal.App.3d 443, 450.)

Section 1575 of the Civil Code defines undue influence to include, among other things, the use of authority by one "who holds a real or apparent authority" over another "for the purpose of obtaining an unfair advantage," "taking an unfair advantage of another's weakness of mind," and "taking a grossly oppressive and unfair advantage of another's necessities or distress." Undue influence has been described as "persuasion which tends to be coercive in nature." (*Odorizzi, supra*, 246 Cal.App.2d at p. 130.) "The hallmark of such persuasion is high pressure, a pressure which works on mental, moral, or emotional weakness to such an extent that it approaches the boundaries of coercion." (*Ibid.*)

a. *The trial court's factual findings are supported by substantial evidence*

The trial court found the evidence before it, primarily Villanueva's and Lee's declarations[3] and the settlement agreement, did not "support a finding of duress or undue influence." In support of this ruling, the trial court found:

> "There was nothing improper about Villanueva showing up [un]announced at Lee's office to serve her with the Summons and Complaint.

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[3] At the hearing on Oliveros's motion, defendants' counsel stated he had "no other witnesses."

Further, the evidence reflects that, prior to filing this action, [Oliveros] filed a wage claim against [d]efendants with the [DLSE]. Thus, [d]efendants had known about the claims asserted against them for over nine months and apparently chose to ignore them.

"Significantly, [d]efendants do not refute that Villanueva advised them to seek advice of counsel. Nor do [d]efendants refute that Lee was the first party to propose a settlement and, prior to reaching an agreement, the parties exchanged multiple counteroffers. There is also no evidence that Villanueva actually represented to [d]efendants that he was a mediator. It appears the [d]efendants are merely suggesting that Villanueva held himself out as a mediator by conveying the offers and counteroffers to each party in his role as [Oliveros's] attorney. There is nothing improper about this.

"Additionally, the settlement agreement, which Lee does not dispute that she signed, includes specific provisions indicating that: (1) Lee was informed of her right to seek independent counsel; (2) Lee made such investigation as she deemed necessary of the facts pertaining to the agreement; (3) Lee voluntarily executed the agreement; and (4) Lee fully understood and consented to the terms of the agreement."

These findings are supported by substantial evidence. Defendants argue "[t]here was no determination at a hearing of the Labor Commissioner; therefore, it is unclear whether anything was ignored." Villanueva declared, however, that defendants failed to appear at the DLSE conference in May 2016 and at the hearing on September 21, 2016. Thus, there was evidence before the court from which it could conclude defendants ignored the DLSE claim.

Villanueva also declared he advised Lee "several times to seek advice of counsel," testimony the court credited. Villanueva further declared that Lee "expressed an interest in settling the matter. She proposed a settlement amount, which I conveyed to my client." We reasonably can infer the trial court credited this testimony over Lee's testimony that "Villanueva wrote up the settlement agreement and persuaded me to sign it and to send him a check for $7,000."

Villanueva's description of the counteroffers made over a week by both his client and Lee also supports the court's finding that Lee's declaration that Villanueva "held himself out as a mediator between the parties who could help them achieve a settlement" was not evidence that Villanueva acted as an actual mediator, but that he merely conveyed the offer and counteroffers between the parties in his role as Oliveros's attorney.

As the court concluded, serving Lee with a complaint containing wage claim allegations defendants had known about for months, advising Lee to seek advice of counsel, and transmitting her settlement offer to his client, as well as the counteroffers that followed between Oliveros and Lee, hardly can be called coercive conduct designed to take unfair advantage of Lee and certainly was not improper or wrongful conduct.

Moreover, as the court noted, by signing the settlement agreement, Lee acknowledged she had been advised of her right

to counsel and had voluntarily entered the agreement with full understanding of its terms. The court reasonably could infer that Villanueva did not take unfair advantage of Lee when she acknowledged her right to counsel and consent to and understanding of the terms of the agreement, particularly in light of her knowledge that Oliveros had made a wage claim against her and her company months earlier.

b. *Lee's declaration does not compel a finding of duress or undue influence*

Defendants nevertheless contend substantial evidence does not support the court's ruling "because Oliveros's attorney presented himself at initial negotiations as a legal expert on the licensing of community care facilities as opposed to simply suggesting that Lee find an attorney." They contend Lee believed Villanueva was giving her advice to settle promptly to avoid "bankruptcy and financial ruin." Defendants also argue Oliveros's claims against them were "speculative and not grounded in legal theory." Although it is unclear from defendants' briefs, their reference to the speculative nature of Oliveros's claims and to Villanueva's representing himself as an expert appear to relate to their argument to the trial court that Villanueva "misrepresented the Health and Safety Code" to Lee.

They also seem to argue the court did not consider Lee's testimony that "Villanueva presented himself as a legal expert on the subject of the California Health and Safety Code in regard to the licensing of community care facilities" because the court did not mention the statement in its ruling.

Lee's testimony that Villanueva held himself out as an expert on the licensing of community care facilities under the Health and Safety Code and somehow misrepresented the law to Lee does not compel a finding of duress or undue influence. As we have said, a threat to take legal action is not unlawful unless

the asserted claims are known to be false. (*Odorizzi, supra*, 246 Cal.App.2d at p. 128.) Defendants conclusorily argue Oliveros's complaint is "speculative and not grounded in legal theory." Defendants presented no evidence to the trial court, however, establishing the falsity of Oliveros's claims or that Oliveros or Villanueva knew Oliveros's claims were baseless. Defendants' reliance on *Leeper v. Beltrami* (1959) 53 Cal.2d 195 and other related authorities is thus misplaced. (See, e.g., *id.* at pp. 203-204 [alleged wrongful attempt to foreclose on mortgage that already had been satisfied sufficiently pleaded economic duress where complaint alleged defendants knew their claim was false].)

Moreover, in considering defendants' argument that the settlement lacked consideration based on this same assertion, the court found, "Defendants fail[ed] to demonstrate that this action is 'wholly invalid or worthless.' " We can thus infer the court considered and rejected defendants' argument with respect to their claim of duress as well.

Lee also declared Villanueva did not "present [her] with an Attorney General's Opinion or a pronouncement from the California Department of Social Services or the Los Angeles County Department of Public Services." She averred, "In all of my life I have never seen any legal document that supports the legal interpretation that attorney Villanueva gives to the California Health and Safety Code in regard to the licensing of community care facilities." Lee's testimony is not evidence that Villanueva falsely represented the law to Lee or that he knew Oliveros's claims against defendants were false or without legal basis. We can thus infer the trial court considered this testimony and rejected it as legally insignificant.

Lee's statement Villanueva presented himself as a legal expert and told her she would face "immediate financial catastrophe" unless she settled also does not demonstrate

Villanueva gave Lee "legal advice" that, as defendants argue, presented her with no other reasonable alternative than "to immediately settle the case to avoid bankruptcy and financial ruin." First, as we have said, the court found Lee never refuted Villanueva's testimony that he advised Lee to seek legal advice. Nor did defendants establish Oliveros's wage claims against defendants were false. Lee's testimony, therefore, does not establish a "wrongful act which is sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to the perpetrator's pressure." (*Rich & Whillock, supra*, 157 Cal.App.3d at p. 1158.) The trial court also reasonably could conclude no coercive pressure was present, having credited Villanueva's testimony that Lee made the first settlement offer and the parties exchanged counteroffers before reaching the final agreement a week later.

Second, Lee did not testify that she believed Villanueva was giving her legal advice, nor would such a belief have been reasonable. The court reasonably could infer Lee knew Villanueva was Oliveros's attorney, representing his interests: Villanueva represented Oliveros in his DLSE wage claim, he is listed as Oliveros's attorney on the summons and complaint, and he conveyed Lee's settlement offer to his own client. Nor does the absence from the trial court's ruling of Lee's statement about Villanueva "presenting himself as an expert" mean the court did not consider it. Indeed, we must presume the court did consider this testimony, but rejected it as either not credible or not legally significant.

Finally, defendants argue "Oliveros could have submitted testimony that refuted" Lee's statement that he presented himself as an expert. Defendants also state Oliveros's brief does not explain or deny this statement or Lee's declaration Villanueva told her that if she "did not expeditiously sign off on

the settlement agreement he was preparing and make a partial payment, then [Lee] faced an immediate financial catastrophe." They argue we can thus infer these statements are "the stronger evidence in favor of Appellant."

Defendants in essence are asking us to reweigh the evidence and make our own credibility determinations. This we cannot do. Drawing all reasonable inferences in favor of the trial court's findings, we conclude substantial evidence supports its conclusion the settlement agreement was enforceable.

DISPOSITION

The judgment is affirmed. Armando Oliveros is to recover his costs on appeal.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.